UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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POPI BEGUM,

Plaintiff,

REPORT & RECOMMENDATION

-against-

08 Civ. 7511 (BSJ) (MHD)

WOODSIDE DISCOUNT AUTO CENTER,

:

Defendant.

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TO THE HONORABLE BARBARA S. JONES, U.S.D.J.:

Plaintiff Popi Begum commenced this lawsuit in August 2008, alleging that defendant Woodside Discount Auto Center had improperly altered the odometer of a vehicle that it then sold to the plaintiff. Defendant's counsel appeared, and, at a status conference on December 16, 2008, was ordered to file an answer or other response to the complaint that day, with fact discovery to be completed by March 31, 2009. (See Order dated Dec. 16, 2008).

Two days later defendant's attorney moved for leave to withdraw as counsel of record. Defendant, although served with the motion, did not respond, and we granted the application by endorsed order dated January 5, 2009. In that order we also stayed the case until February 2, 2009 to permit defendant to retain a new attorney and for that lawyer to file a notice of appearance. We also specified in the order that "[i]f defendant fails to arrange for the appearance of a new attorney within that time frame, defendant will face the prospect of a default judgment."

No attorney has appeared for the defendant, and it has not sought an extension of time to arrange for substitute counsel.¹ Since it is a corporation (Compl. ¶ 5), it cannot appear pro se, see Rowland v. California Men's Colony, Unit II Men's Advisory Council, 506 U.S. 194, 201-02 (1993), and by its failure to comply with the court's order has entirely stalled the litigation. Under these circumstances, the only remedy appears to be the entry of a default, which plaintiff requests (see Feb. 9, 2009 letter to the Court from Sergei Lemberg, Esg.) and we recommend.²

CONCLUSION

For the reasons noted, we recommend entry of a default against defendant Woodside Discount Auto Center. The determination of damages may await the adjudication of claims in the forthcoming amended complaint.

Pursuant to Rule 72 of the Federal Rules of Civil Procedure, the parties shall have ten (10) days from this date to file written

¹Plaintiff's counsel has represented that the company has gone out of business. (Feb. 9, 2009 letter to the Court from Sergei Lemberg, Esq.).

² We note that plaintiff has requested leave to amend the complaint to add as a defendant the Credit Assistance Corporation, which is the holder of plaintiff's note, a process that is likely to take up to thirty days. (Feb. 9, 2009 letter to the Court from Sergei Lemberg, Esq.). Thus entry of a default against Woodside Discount Auto Center would not end this litigation.

objections to this Report and Recommendation. Such objections shall be filed with the Clerk of the Court and served on all adversaries, with extra copies to be delivered to the chambers of the Honorable Barbara S. Jones, Room 620, and to the chambers of the undersigned, Room 1670, 500 Pearl Street, New York, New York 10007-1312. Failure to file timely objections may constitute a waiver of those objections both in the District Court and on later appeal to the United States Court of Appeals. See Thomas v. Arn, 474 U.S. 140, 150 (1985), reh'q denied, 474 U.S. 1111 (1986); DeLeon v. Strack, 234 F.3d 84, 86 (2d Cir. 2000) (citing Small v. Sec'y of Health and Human Serv., 892 F.2d 15, 16 (2d Cir. 1989)); 28 U.S.C. § 636(b) (1); Fed. R. Civ. P. 72, 6(a), 6(d).

Dated: New York, New York February 10, 2009

MICHAEL H. DOLINGER

UNITED STATES MAGISTRATE JUDGE

Copies of the foregoing Report and Recommendation have been sent this day to:

Sergei Lemberg, Esq. Lemberg & Associates L.L.C. 1100 Summer Street, Floor 3 Stamford, CT 06905

Woodside Discount Auto Center 172-02 Hillside Avenue Jamaica, NY 11432